

Misc. Civil Application Nos.1651 and 1716 of 1993.

Date of decision: 17.1.1996.

For approval and signature

The Honourable Mr. Justice S. M. Soni

and

The Honourable Mr. Justice R. R. Jain

Mr. H.J. Nanavati, advocate for applicants in both applications.

Mr. N.D. Nanavati, Mr. S.N. Shelat, Mrs. T.M. Shaikh, learned advocates and Mr. P.S. Champaneri, AGP, for respondents in both the applications.

1. Whether Reporters of Local Papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether their Lordships wish to see the fair copy of judgment?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

Coram: S.M. Soni & R.R. Jain, JJ.

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January 17, 1996.

Common oral judgment (Per Soni, J.)

Applicants in both the above applications have moved this Court for taking action under the Contempt of Courts Act against the respondents for non-compliance of the order passed by the Affiliated Colleges Tribunal in Application

Nos.42 and 43 of 1992. By the said order, the Tribunal has ordered to pay salary for the period prescribed in the order within three months. The Tribunal has also ordered that the fixed deposit of the management lying with the bank shall not be encashed till salaries are paid.

Learned advocate Mr. N.D. Nanavati for respondents states that on the one hand the Tribunal has ordered to make payment of salary and on the other hand the fixed deposit from which they could pay the salary is ordered not to be encashed. In the order itself it is stated that the salary shall be paid irrespective of payment of grant. If the grant is received the management can make payment and if the grant is not received the management can make payment from its funds. But, by the order of the Tribunal the said funds are attached and ordered not to be encashed. This clearly shows the inability of the management to pay salary. When it is clear from the order itself that the management is not able to pay salary then in our opinion, non-payment of salary cannot be said to be non-compliance of the order of the Tribunal amounting to wilful disobedience of the order.

In view of this fact, the applicants have failed to satisfy this court that there is wilful disobedience which may amount to contempt. The applications are, therefore, liable to be dismissed and are hereby dismissed. Rule in both applications discharged. No order as to costs in both applications.